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**Long Island Realty Group of L.I., Inc. and its alter-ego and successor 15–35 Hempstead Properties, LLC d/b/a Hempstead Properties, LLC and Hempstead Properties, LIC; and their alter egos 15–35 Elk Street, L.I.C. Corp.; Jackson Street, Inc.; Jackson 299 Hempstead, LLC; and Steven Kates and Angelina Miller Kates and Local 808, International Brotherhood of Teamsters.** Cases 29–CA–26436 and 29–CA–26555

June 23, 2011

#### SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS  
BECKER AND PEARCE

The General Counsel seeks a default judgment in this case on the ground that the Respondents have failed to file an answer to the compliance specification.

On March 18, 2005, the Board issued an Order<sup>1</sup> that, among other things, ordered the Respondent Long Island Realty Group of L.I., Inc. (Realty) to make whole employees Angel Bonilla and Jose Cortorreal for any loss of earnings and other benefits, with interest, suffered as a result of their unlawful discharges in violation of Section 8(a)(3) and (1) of the Act. On April 17, 2006, the United States Court of Appeals for the Second Circuit entered its judgment enforcing in full the Board's Order.<sup>2</sup>

A controversy having arisen over the amount of backpay due the discriminatees, on November 18, 2009, the Regional Director for Region 29 issued a compliance specification and notice of hearing alleging the amount of backpay due under the Board's Order. Although not parties to the original unfair labor practice litigation, Respondents 15–5 Hempstead Properties, LLC d/b/a Hempstead Properties, LLC, and Hempstead Properties, LIC (Hempstead); 15–35 Elk Street, L.I.C. Corp. (Elk Street); Jackson Street, Inc. (Jackson); and Jackson 299 Hempstead, LLC (Jackson 299); were added to the compliance specification and were alleged to have derivative liability for Realty's unfair labor practices because these entities constitute a single integrated enterprise and a single employer within the meaning of the Act. In addition, Respondents Steven Kates a/k/a Steven Cates (Kates) and Angelina Miller Kates (Miller Kates) were added to the

compliance specification as alter egos of Respondents Hempstead, Elk Street, Jackson, and Jackson 299.

The compliance specification set forth the following allegations.

*The Respondents' businesses:* The Board's Order, as enforced by the Court of Appeals, found, inter alia, that Respondent Realty is a New York corporation which owned and operated residential apartment buildings. At all material times, Respondent Realty maintained its principal office and place of business at 70 Broadway, Hicksville, New York.

At all material times, 15–35 Hempstead Properties, LLC d/b/a Hempstead Properties, LLC and Hempstead Properties, LIC (Hempstead) was engaged in the business of owning and operating a residential apartment building. At all material times, Respondent Hempstead maintained its principal office and place of business at 160 Central Park South, New York, New York.

At all material times, 15–35 Elk Street, L.I.C. Corp. (Elk Street) was engaged in the business of owning and operating a residential apartment building. At all material times, Respondent Elk Street maintained its principal office and place of business at 11 White Birch Road, Syosset, New York.

At all material times, Jackson Street, Inc., (Jackson) was engaged in the business of owning and operating a residential apartment building. At all material times, Respondent Jackson maintained its principal office and place of business at 11 White Birch Road, Syosset, New York.

At all material times, Jackson 299 Hempstead, LLC (Jackson 299) was engaged in the business of owning and operating a residential apartment building. At all material times, Respondent Jackson 299 maintained its principal office and place of business at 11 White Birch Road, Syosset, New York.

*Common business factors:* At all material times, Steven Kates a/k/a Steven Cates (Kates) was the principal shareholder of Realty; an officer of and the controlling shareholder of Hempstead; the president of Elk Street; the president of Jackson; and the controlling shareholder of Jackson 299.

At all material times, Angelina Miller Kates (Miller Kates) has been the wife of Kates, and the vice president of Elk Street.

At all material times, Respondents Realty, Hempstead, Elk Street, Jackson, and Jackson 299 have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged per-

<sup>1</sup> Unpublished Order, adopting, in the absence of exceptions, the decision of Administrative Law Judge D. Barry Morris issued on January 6, 2005 (JD(NY)–01–05).

<sup>2</sup> No. 06–0556.

sonnel with each other; and have held themselves out to the public as a single-integrated business enterprise.

Based on the operations described above, Respondents Reelty, Hempstead, Elk Street, Jackson, and Jackson 299 constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

*Knowledge of unfair labor practices:* On about April 30, 2004, Reelty purchased 15–35 Elk Street, LLC, whose only asset was an apartment building located at 15–35 Elk Street, Hempstead, New York. 15–35 Elk Street, LLC and Local 808, International Brotherhood of Teamsters, were parties to a collective-bargaining agreement covering a unit of service and maintenance employees employed at 15–35 Elk Street, Hempstead, New York, that had an effective term of October 1, 2003 through September 30, 2006.

On January 6, 2005, the administrative law judge who heard these matters issued a decision finding that Reelty had violated the Act by discharging employees Bonilla and Cortorreal.

On about January 26, 2005, Kates incorporated 15–35 Hempstead Properties, LLC. On about January 31, 2005, 15–35 Elk Street, LLC owned by Reelty, transferred title to the property located at 15–35 Elk Street, Hempstead, New York to Respondent Hempstead. As consideration for the transfer, Hempstead paid \$10 to 15–35 Elk Street, LLC. Before Hempstead began to operate the business of Reelty, Hempstead, by Kates, was on notice of the unfair labor practices committed by Reelty, and the administrative law judge's decision dated January 6, 2005, and had notice that the unfair labor practices had not been remedied and were the subject of ongoing litigation between the Board and Reelty.

Based upon the conduct and facts described above, Hempstead began to operate the business of Reelty with knowledge of the pending unfair labor practice charges against Reelty. Therefore, Hempstead is responsible for remedying the unfair labor practices of Reelty and is jointly and severally liable to comply with the Board order and the judgment of the United States court of appeals, as set forth above.

*Financial dealings:* On about October 4, 2006, Hempstead sold the property located at 15–35 Elk Street to 15–5 LLC. No Kates family member was an officer or a shareholder of 15–35 LLC. Respondent Hempstead received net sales proceeds of \$1.5 million from the sale of its property. On October 5, 2006, Hempstead deposited the \$1.5 million in proceeds from the sale of the 15–35 Elk Street property into its operating account at Commerce Bank. On October 6, 2006, Hempstead transferred the \$1.5 million in sales proceeds to a Commerce Bank account registered to Elk Street. The transfer of

funds entirely depleted the funds in Hempstead's operating account. Since October 6, 2006, no funds have been deposited into Hempstead's operating account.

Hempstead, by fully depleting its operating account, rendered itself insolvent and unable to satisfy the remedial obligations of Reelty to the Board under the court judgment. When it opened its account at Commerce Bank, Elk Street submitted a corporate resolution signed by Kates as president, and Miller Kates as vice president. The corporate resolution authorized both its officers, Kates and Miller Kates, to act as signatories of its Commerce Bank account.

On October 10, 2006, Elk Street transferred \$1545 million from its Commerce Bank account to a Commerce Bank account registered to Jackson. Subsequent to the transfer, but also on October 10, 2006, Jackson transferred \$1574 million from its Commerce Bank account to a Commerce Bank account registered to Jackson 299.

On about October 27, 2006, Jackson 299 issued a \$925,000 check that was drawn on its Commerce Bank account and was payable to Linda Giordano. The check was rendered to Linda Giordano as partial payment for the purchase of a home located at 6 Grace Drive, Old Westbury, New York. On October 27, 2006, title to 6 Grace Drive, Old Westbury, New York, was transferred from Linda Giordano to Respondent Miller Kates, and has been the primary residence of Kates and Miller Kates.

Since about October 27, 2006, neither Reelty, Hempstead, Elk Street, Jackson, nor Jackson 299 has filed a mortgage or a security interest in the property located at 6 Grace Drive, Old Westbury, New York. Since on or about October 6, 2006, Kates and Miller Kates have repeatedly used funds on deposit in the Commerce Bank accounts described above, and registered to Elk Street, Jackson, and Jackson 299, to pay for personal expenses such as clothing and home improvement items. Since on about October 4, 2006, Kates and Miller Kates have diverted and/or facilitated the diversion of Hempstead assets to themselves in effort to render Hempstead insolvent and incapable of fulfilling its obligations to the Board under the court judgment.

Based on the conduct and facts described above, Elk Street, Jackson and Jackson 299 were used as instruments through which the sale proceeds from the 1535 Elk Street property could be disguised, and ultimately used for purchase by Kates and Miller Kates of their primary residence, and to evade their responsibilities under the Act.

*Alter Egos:* At all material times, Reelty, Hempstead, Elk Street, Jackson, Jackson 299, Kates, and Miller Kates have transferred corporate assets without fair considera-

tion, have failed to maintain an arms-length relationship between and among themselves, have commingled funds, have diverted corporate funds or assets for noncorporate purposes, have disregarded the corporate form, and have used corporate assets to pay for the personal expenses of Kates and Miller Kates. Based on the conduct and facts described above, Respondents Kates and Miller Kates are alter egos of Respondents Hempstead, Elk Street, Jackson, and Jackson 299, and are personally liable, jointly and severally, with Respondents Reelty, Hempstead, Elk Street, Jackson, and Jackson 299 for remedying the unfair labor practices of Respondent Reelty. Further, based on the conduct and facts described above, Respondents Hempstead, Elk Street, Jackson, and Jackson 299 have been alter-egos of Respondent Reelty, and therefore Respondents Hempstead, Elk Street, Jackson and Jackson 299 are jointly and severally liable with Respondent Reelty to comply with the Board Order and the judgment of the United States court of appeals, as set forth above.

*Failure to file an answer:* The compliance specification notified the Respondents that they should file an answer complying with the Board's Rules and Regulations within 21 days from the date of the specification. Although properly served with a copy of the compliance specification, the Respondents failed to file an answer.<sup>3</sup>

By letter dated December 14, 2009, and sent by regular mail and Federal Express Delivery Service to Kates and Miller Kates, both individually and in their capacities as officers of the corporate Respondents, counsel for the General Counsel advised the Respondents that no answer to the compliance specification had been received and that unless an appropriate answer was received by December 21, 2009, counsel for the General Counsel would file a Motion for Summary Judgment with the Board. Those documents were sent to the same address as the compliance specification. The Federal Express receipt indicates that this letter was delivered on December 17, 2009. Despite the reminder letter sent by counsel for the General Counsel, no answers to the compliance specification were filed by or on behalf of Respondents, and Respondents have not made any application for an extension of time to file an answer.

<sup>3</sup> The compliance specification was served on Kates and Miller Kates by certified mail on November 18, 2009, and was also sent to Kates and Miller Kates by regular mail. Despite the delivery attempts by the United States Postal Service, the certified mail copies of the compliance specification were returned to the Regional Office as "unclaimed." However, there is no evidence that the copies delivered by regular mail were returned. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited therein.

*Motion, Order and Notice:* On December 31, 2009, the General Counsel filed with the Board a Motion for Default Judgment. On January 5, 2010, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. However, the Order and Notice to Show Cause was not served on Miller Kates. Accordingly, on February 26, 2010, a revised Notice to Show Cause was issued and served on all the parties.<sup>4</sup>

The Respondents did not file a response to the Notice to Show Cause or the Revised Notice to Show Cause. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Default Judgment, the Respondents, despite having been advised of the filing requirements, have failed to file an answer to the compliance specification. In the absence of good cause for the Respondents' failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Default Judgment. Therefore, we conclude that: (1) the amounts of net backpay due to discriminatees Angel Bonilla and Jose Cortorreal are as stated in the compliance specification; (2) Respondents Reelty, Hempstead, Elk Street, Jackson, and Jackson 299 are alter egos and constitute a single-integrated business

<sup>4</sup> Reelty acknowledged service of the documents by signing the Postal Service Form 3811, and the signed copy was returned to the Board. Service on the other corporate respondents was accomplished by service on their corporate officers Kates and Miller Kates. The revised Notice to Show Cause was served on Miller Kates by certified mail and regular mail at her home address, and on Kates via certified mail at his business address. Although the copies sent via certified mail to Kates and Miller Kates were unclaimed and returned to the Board, as noted above, the failure or refusal to accept certified mail or to provide for proper service will not excuse the failure to file an answer. Furthermore, there is no evidence that the copy sent to Miller Kates via regular mail was returned. Thus, based on the foregoing, and in light of our finding that Kates and Miller Kates are alter egos, officers, and/or principal or controlling shareholders of the corporate respondents, we are satisfied that service on the Respondents has been accomplished.

enterprise and a single employer, and as such are jointly and severally liable for the amounts due the discriminatees under the Board's Order; and (3) Respondents Kates and Miller Kates are alter egos of the corporate Respondents and are personally liable, jointly and severally, with the corporate Respondents for the amounts due to the discriminatees.<sup>5</sup> We will therefore order the Respondents to pay the amounts to Angel Bonilla and Jose Cortorreal, plus interest accrued to the date of payment.

#### ORDER

The National Labor Relations Board orders that the Respondents, Long Island Reelty Group of L.I., Inc. and its alter ego and successor 15-35 Hempstead Properties, LLC d/b/a Hempstead Properties, LLC and Hempstead Properties, LLC; and their alter egos 15-35 Elk Street, L.I.C. Corp.; Jackson Street, Inc.; Jackson 299 Hempstead, LLC; and Steven Kates and Angelina Miller Kates,

<sup>5</sup> In asserting that Kates and Miller Kates are jointly and severally liable with the corporate respondents, the General Counsel alleges that they are alter egos of the corporate Respondents, and, alternatively, seeks to pierce the corporate veil to impose personal liability on them for the unfair labor practices of Respondent Reelty. The test for imposing personal liability is set forth in *White Oak Coal*, 318 NLRB 732, 732 (1995), enf'd. mem. 81 F.3d 150 (4th Cir. 1996). There, the Board held that "the corporate veil may be pierced when: (1) the shareholder and corporation have failed to maintain separate identities, and (2) adherence to the corporate structure would sanction a fraud, promote injustice, or lead to an evasion of legal obligations."

In addition to finding alter-ego status with respect to Kates and Miller Kates, we find that the compliance specification sets forth a sufficiently clear and specific factual basis to support a finding of personal liability on a veil-piercing theory. The compliance specification specifically alleges that Kates and Miller Kates commingled funds, used corporate assets for personal expenses such as clothes, home improvement items, and partial payment for the purchase of a house, and depleted the corporate assets of Respondent Hempstead to render it financially incapable of satisfying the Board's Order in the unfair labor practice case.

Hempstead and Old Westbury, New York, their officers, agents, successors, and assigns, shall jointly and severally make whole the individuals named below, by paying them the amounts following their names, plus interest accrued to the date of payment, in accordance with *F. W. Woolworth*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987)<sup>6</sup>, minus tax withholdings required by Federal and State laws:

	<u>Net Backpay</u>
Angel Bonilla	\$ 8,375.00
Jose Cortorreal.....	53,990.00
Total Backpay Due	\$62,365.00

Dated, Washington, D.C. June 23, 2011

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Wilma B. Liebman, Chairman

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Craig Becker, Member

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Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>6</sup> The Board has declined to apply its new policy, announced in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), of daily compounding of interest on backpay awards, in cases such as this, that were already in the compliance stage on the date that decision issued. *Three Rivers Electrical, Inc.*, 356 NLRB No. 38, slip op. at 1 fn. 2 (2010).